Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

RICARDO PITTMAN, JR.,

Petitioner,

v.

THE VILLAGE OF DOLTON, a municipal corporation in the state of Illinois, et al.,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Does a Federal District Court have inherent subject matter jurisdiction to hear Defendants Motion to enforce settlement agreements that are no offer otherwise were not acceptance, but the District Court Act on Defendants Motion to enforce settlement agreement without ancillary jurisdiction; or more specifically, does a Federal District Court have subject matter jurisdiction to enforce a settlement agreement were never entered into between the parties when: 1) the case was pending before the court at the time the court forced a fabricated document and grant the motion without issuing an order, having been dismissed with prejudice thereafter the motion to enforce settlement agreement was granted 2) the settlement agreement has never been incorporated into an order or judgment of the court disposing the action, 3) the court has not expressly retained jurisdiction over the action, and 4) no other independent grounds for Federal court jurisdiction to enforce the agreement exist. A conflict exists among the United States Courts of Appeal on this issue.

2. Did the District Court abuse its discretion when it enforced settlement agreement without subject matter jurisdiction and grant the motion for Defendants/appellees and dismissed the case with prejudice entered December 20, 2005. The District Court denied Plaintiff motion to vacate the dismissal with prejudice.

3. Does a Federal District Court have ancillary jurisdiction to enforce settlement agreement without other independent grounds for Federal Court jurisdiction to enforce settlement agreement.

PARTIES TO THE APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The parties to the appeal in the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") were Ricardo Pittman, Jr., as Plaintiff/Appellant and the Village of Dolton and its Police Department and Officer Lacey Defendants/appellees; however, these parties had been properly names.

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I.

REPORTING OF THE ORDER DELIVERED

Delivered a order in Ricardo Pittman, Jr., v. The Village of Dolton, Illinois, Et. Al, which was on appeal before that court, which it indicated was not appropriate for publication. A copy of this order is included in the appendix included herewith.

II.

STATEMENT OF JURISDICTION GROUNDS FOR PETITION

Jurisdiction of this court is invoked pursuant to Rule **10.1(a)** of the rules of the Supreme Court of the United States because a direct conflict between United States Circuit Courts of Appeal involving Federal Court subject matter jurisdiction exists. In particular, on August 11, 2006, the Seventh Circuit rendered its decision and entered its judgment in the action of Ricardo Pittman, Jr., v. the Village of Dolton, Illinois et. al. In this decision, the Seventh Circuit held that its ruling in Lynch, Inc. v. Samatamason, Inc., 279 F.3d 487, 490 (7th Circuit 2002) (applying Illinois Law) was dispositive on the issue of inherent subject matter jurisdiction to hear Defendants motion to enforce settlement agreement, concluding that a Federal District Court has jurisdiction under its "inherent supervisory power" to enforce settlement agreement motion even if no other grounds for Federal Court jurisdiction exist. This decision of the Seventh Circuit is in direct conflict with decision rendered by, at least, the United States courts of appeal for the fourth, fifth, sixth and ninth circuits. These Circuit Courts of Appeal have all held that Federal District Courts do not have inherent jurisdiction to enforce settlement agreements which terminated litigation before them and that some other independent ground for Federal

Court jurisdiction must exist before a district court may enforce a settlement agreement in an action or no longer pending before the court.

III.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

This action does not involved any constitutional provision, ordinances or regulations, other than the provisions located in 28 U.S.C.A. Section 1331 et. seg. Relating to Federal Court subject matter jurisdiction.

IV.

STATEMENT OF THE CASE

In July 27, 2004, Petitioner, Ricardo Pittman, Jr., ("Pittman, Jr.") filed his Civil Rights complaint in the United States District court for the Northern District of Illinois Eastern Division. This action against the Village of Dolton, Illinois et. al. ("the Village of Dolton") and other in the Village of Dolton Police Department. This action were about to proceed to trial on the merits in the United States District Court. Plaintiff filed amended complaint July 25, 2005. Respondents, the Village of Dolton, Illinois, filed its motion to enforce settlement agreement, Plaintiff objected to the enforcement of settlement agreement. The District Court Judge Guzman overruled the objection and granted the motion without ancillary jurisdiction, October 21, 2005. No offer was accepted by Plaintiff nor did he authorize his attorney Ward or his agent Mr. Johnson to accept settlement offer and settle the case. Mr. Ward stated there was oral agreement regarding the terms of the settlement agreement between the parties. Mr. Ward and his agent attorney Johnson proposed settlement

agreement never been part of record in this case nor did Plaintiff filed a stipulation and order of dismissal mutually dismissing with prejudice their respective actions. There was no oral settlement agreement between the parties, and was never reduced to writing, at the insistence of the Village of Dolton, nor was it ever incorporated into an order or judgment of this Court. In fact, Mr. Ward oral settlement agreement was never even referred to in any order of dismissal, there was no order by this court. The District Court made no other move to retain jurisdiction of the action and simply dismissed the case with prejudice without entering a stipulation and order of dismissal on December 20, 2005 but this court entered judgment in a civil case was improper. On October 19, 2005, the Village of Dolton, brought a motion before the District Court to enforce the settlement agreement and Court granted the Village of Dolton motion, alleging that Plaintiff had authorized Mr. Ward and his agent, Mr. Johnson to accept the offer, that is absolutely false. Among other arguments, Plaintiff argued in his response in the District Court and the Seventh Circuit Court of Appeal. The District Court error enforcing settlement agreement when there is no acceptance to the offer, the agreement was not incorporated into an order or judgment of the court, they had retained jurisdiction over the action to hear enforcement disputes and Plaintiff did not asked that this court to do so, and the court had no independent basis for Federal Jurisdiction because the jurisdiction had been met. Plaintiff received a letter from attorney Johnson stating no facts relating to the pending case at the time the conversation took place, nor did he discuss anything about if he was going to accept the settlement offer August 3, 2005. Plaintiff appeared in Judge Guzman court, but Mr. Ward nor his agent, Mr. Johnson appeared in court that day. The Village of Dolton attorney, Mr. Larry S. Kowalczyk appeared in court and attempting to have the case dismissed on basis of the settlement agreement between Mr. Ward and his agent, Mr.

Johnson and Mr. Kowalczyk. They knew there was not settlement have been agreed upon. They also knew Plaintiff did not accept the offer August 1, 2005. On or about August 30, 2005, Plaintiff received a letter from attorney Mr. Ward, agent Mr. Johnson relying on the letter was sent by Plaintiff, August 25, 2005.

Plaintiff wrote a letter to his attorney Anderson J. Ward. This letter was concerning the pending case in the District Court on or about September 4, 2005. Plaintiff received numerous statements from Mr. Ward, all his statements was a lie or false and untrue. Plaintiff counsel, Mr. Johnson, turnover a copy of a settlement agreement that had been fraudulent sealed, Plaintiff did not know Mr. Johnson had these documents until he appeared in court. Mr. Johnson said to Plaintiff, sign this document. Plaintiff refused to sign the document he had not seen until three minutes before he arrived in Judge Guzman's Court. Plaintiff, at no time relevant to the settlement conference authorized attorney Anderson J. Ward nor his agent, Mr. Johnson to prepare any documents for settlement agreement. The offer was unacceptable, therefore, Mr. Ward and his agent, Mr. Johnson accepted their own offer from the Village of Dolton, Illinois et al. On or about August 2, 2005, the last conversation Plaintiff had with Mr. Ward on the phone thereafter he called Plaintiff's home. Mr. Ward phone conversation with Plaintiff, Mr. Ward made numerous threats to Plaintiff demanding that Plaintiff must take this offer, if you don't accept this settlement offer your case would be dismissed with prejudice. On or about August 3, 2005, Plaintiff received a letter from attorney Johnson, believed the letter was sent through the mail to Plaintiff, is authentic but the fax copy would stated to have been sent to attorney Kowalczyk was not authentic document filed October 19, 2005. On or about July 27, 2004, Plaintiff filed his Civil Rights Lawsuit in the United States District Court Clerk Office. On July 25, 2005 and

Plaintiff filed amended complaint before Plaintiff hired the Law Office of Anderson J. Ward, P.C., to represent him in his Civil Rights action. Mr. Ward agreed to represent Plaintiff and take position to be the lead attorney in this case, but attorney Ward signed the case to his agent, Letheal N. Johnson, Mr. Johnson represent Plaintiff in his Civil Rights Lawsuit. Default judgment was obtained by Plaintiff and against Defendants for failure to answer complaint May 13, 2005. Mr. Anderson J. Ward never appeared in this court nor he represent Plaintiff his court. Mr. Ward never appeared at the settlement conference. Mr. Ward signed this case to his agent Mr. Letheal N. Johnson, Mr. Johnson appeared at the settlement conference with Plaintiff and represent him at the settlement conference. There was a offer at the settlement conference August 1, 2005. Plaintiff rejected the offer. Mr. Letheal N. Johnson informed Defendants counsel Mr. Larry S. Kowalczyk to hold the offer open for 48 hours to see if Plaintiff would change his mind. Plaintiff never changed his mind. Thereafter, Mr. Ward and his agent, Mr. Johnson discussed the settlement offer than Mr. Ward called Plaintiff's home the next day, August 2, 2005, early that morning between 7:30a.m. and 8a.m. Mr. Ward made numerous threats to Plaintiff, you must accept this offer, if you don't accept this offer you would get nothing and your case will be dismissed with prejudice. Plaintiff continued to reject the offer which took place at the settlement conference, thereafter the settlement conference Plaintiff never accepted Defendants offer. Attorney Ward was right, the case was dismissed with prejudice, Mr. Ward new the case would be dismissed. Mr. Ward agreed with Defendants attorney to have this case dismissed without Plaintiff consent or authorization to conclude a settlement. A settlement agreement could not be enforced by any court. Unless a offer acceptance and all parties agree. Pittman, attorney Ward deceived Plaintiff when he instructed Defendants attorneys to prepare a motion to enforce settlement agree-

ment. Mr. Ward caused the ("constructive-fraud"). Mr. Ward and his agent attorney Johnson and attorney Kowalczyk commits fraud on the court. The District court Judge Guzman knew Defendants attorneys commited fraud in his court, but did not take action against Defendants attorneys. The law of Anderson J. Ward and his agent Mr. Letheal N. Johnson obtained information from Plaintiff, Ricardo Pittman, Jr. and related to the Village of Dolton attorney, Larry S. Kowalczyk. Plaintiff knowing the statement in the settlement to be false, the settlement contract or the offer was not going to be done nor completed and that, Mr. Ward and his agent, Mr. Johnson made only false promises, misrepresentation or the concealment were going to make, Mr. Ward's statement was false with intent to deceive Plaintiff which they did so with intent to violate Plaintiff's constitutional rights. The representation on behalf of Plaintiff, Mr. Johnson described above were false and/or failed to disclose matters necessary to make their and other representations not misleading. Mr. Ward, and his agent, Mr. Johnson knew that these representations were false at the time they were made and the statements was untrue. These representations were made with the intent to induce Plaintiff to rely on them, and Plaintiff reasonably and justifiably relied on these representation as set forth above. The Law of Anderson J. Ward, Mr. Ward signed this case to his agent, Mr. Letheal N. Johnson to represent Plaintiff, in his civil rights complaint filed in the United States District Court Clerk Office. Moreover, Plaintiff refused the offer at the settlement conference. Mr. Johnson informed his principal, Mr. Ward that Plaintiff refused the offer. Mr. Ward made a phone call to Plaintiff's home to discuss the offer. Mr. Ward's statements in his discussion was improper and false. Mr. Ward knew all along these statements were false, not only that, Mr. Ward lied as well as Mr. Johnson, commits fraud on the courts, and with intent to deceive Plaintiff and they did so. Moreover, the promises made

by Mr. Anderson J. Ward and his agent, Mr. Johnson misrepresentations as described above were made with the intent that they would not perform their duties and they reasonably induced Plaintiff to rely upon them to his detriment. The foregoing representations and promises were the scheme employed by Mr. Anderson J. Ward and his agent Mr. Letheal N. Johnson to accomplish its fraud against Plaintiff Mr. Letheal N. Johnson represented that the information was given to Plaintiff would be actual facts. Concealment of facts constitutes fraud. Plaintiff showed Mr. Ward and his agent, Mr. Johnson concealed all relevant documents relating to the case. The statements in the documents were false and untrue; in fact, attorneys Ward and his agent, attorney Johnson had no intention to perform their obligation to Plaintiff from the very beginning. The statements in the documents were known by the attorneys to be false when they made them, and Plaintiff believed the statements and documents so made by the attorneys to be true and relied upon them and was induced by the attorneys Ward and his agent, attorney Johnson. By taking numerous overt acts in furtherance the conspiracy to enforce settlement agreement, the attorneys knew their intention was not to legally maintain this settlement agreement with Plaintiff, thereafter obtained information from Plaintiff by Mr. Ward and his agent, Mr. Johnson, the reason for the information so they could breach of fiduciary duty, the attorneys engaging in inappropriate conduct against Plaintiff and above acts of malice or reckless indifference, intentional fraud against Plaintiff, Mr. Anderson J. Ward and his agent Mr. Letheal N. Johnson owes a fiduciary duty to Plaintiff, but they breached that duty and engaged in inappropriate conduct when they falsely testify against Plaintiff in the District Court, Judge Guzman Court.

V.

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE OF THE CLEAR SPLIT BETWEEN THE CIRCUIT COURTS OF APPEAL ON THE FUNDAMENTAL ISSUE OF FEDERAL COURT JURISDICTION

Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 114 S. Ct. 1673, 128 L. Ed 2d 391 (1994)

A. The position taken by the Seventh Circuit.

In its order that it issued in the action

Pittman, Jr. v. the Village of Dolton, Illinois et. al on appeal before it, the Seventh Circuit held: "Despite Plaintiffs arguments to the contrary, our holding in Kim v. Alvey, Inc. 749 N.E. 2d 368, 378 (Ill. Ct. App. 2001) is dispositive of the issue of the District Court's jurisdiction to enforce settlement agreement when Plaintiff did not accept the offer, there was no order or stipulation entered by this court, the sole issue in the appeal." (Order P. 3) it continued, stating that in Kim v. Alvey, Inc., 749 N.E. 2d 368, 378 (Ill. Ct. App. 2001); Lynch, Inc. v. Samatamason Inc., 279 F. 3d 487, 490 (7th Circuit 2002) "we expressly hold that the District court had jurisdiction to decide the motion. The Seventh Circuit issued an (order p. 3).

B. The Position taken by the Fourth, Sixth, Seventh and Other Circuit Courts of Appeals

This position, however, is in Direct contrast to the position taken by other United States Circuit Court of Appeal notably the Fourth, Sixth and Seventh Circuits. The holding in Kim and Lynch that oral settlement agreements are valid

under Illinois Law. See McAllister v. Hayes, 65 Ill. App. 3d 426, 116 Ill. Dec. 485, 519 N.E. 2d 71 (Third District 1988); the court in McAllister held that: settlement by Plaintiff's counsel was not authorized, as Plaintiff's acceptance of settlement offer was conditioned on further medical examination providing consistent diagnosis and that condition had failed. Further, appellant contends the trial court erred in denying her motion to dismiss Defendant's motion to enforce settlement, Defendant failed to state a cause of action to enforce a settlement agreement, the pleading must allege liability of the Defendant, the agreement concerning the amount to be paid, and acceptance of the agreement in settlement of the original dispute. Id. 72., also see Kazale v. Flowers, 185 Ill. App. 3d 224, 133 Ill. Dec. 382, 541 N.E. 2d 219 (Second District 1989), the Kazale court ruled the same as McAllister court. Kazale stated attorney authorized to represent client in litigation to conclude a settlement; attorney must have express consent or authorized to conclude a settlement.

This position, however, is in direct contrast to the position taken by other United States Circuit courts of Appeal, notably the Fourth, Sixth and Seventh circuits. Fairfax Countywide Citizens Ass'n v. Fairfax County, 571 F. 2d 1299 (4th Cir.), cert. denied 439 U.S. 1047, 99 S. Ct. 722, 58 L.Ed.2d 706 (1978), the Fourth Circuit held that a district court was not empowered to enforce a settlement agreement that had terminated litigation which had been pending before it but which had since been dismissed "unless the agreement had been approved and incorporated into an order of the court, or, at the time the court is requested to enforce the agreement, there exists some independent ground upon which to base federal jurisdiction." Fairfax, 571 F.2d at 1303. As in the case of Kokkonen, the dismissal orders in Fairfax did not mention that the parties had entered into settlement

agreements "and they neither approved nor incorporated either settlement agreement." Fairfax, 571 F.2d at 1303. Based on these facts, when the Plaintiffs later moved the district court to enforce the settlement agreements, the Fourth Circuit held that the district court did not have subject matter jurisdiction to enforce a settlement agreement in an action which the court had dismissed with prejudice, when the agreement had not been approved or incorporated into an order of the court, the court had not retained jurisdiction to enforce the agreement, and there was no other independent ground upon which to base federal jurisdiction. Fairfax, 571 F. 2d at 1301. The Fourth Circuit stressed in Fairfax that district courts are courts of limited jurisdiction, and the district court must have proper jurisdiction, and the district court must have proper jurisdiction before it can hear the case or controversy. Id. It further held that the "inherent power" of a district court to enforce settlement agreements presupposes the existence of federal jurisdiction over the case or controversy. Fairfax, 571 F.2d at 1304. Because the case had been dismissed, the settlement agreement was not incorporated into the order of dismissal and no other grounds for federal jurisdiction wee shown, the settlement agreement amounted to nothing more than a private contract between the parties and, as such, "the state court is an appropriate forum for resolving this dispute." Fairfax, 571 F.2d at 1305, 1303. The Court of Appeals for the Seventh Circuit similarly ruled in McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) that a district court does not have jurisdiction over a dispute involving a settlement agreement "merely by virtue of having had jurisdiction over the case that was settled." McCall, 777 F.2d 1185. The McCall court held that there is no inherent federal jurisdiction to enforce agreements to settle federal actions. McCall, 777 F.2d at 1189. Instead, there must be some independent form of jurisdiction for the court, such as the court's deliberate retention of jurisdiction, before the settlement agreement by which the

federal case was dismissed will be enforceable in federal court. McCall, 777 F.2d 1187-1189. According to the Seventh Circuit in McCall, an unconditional dismissal of the federal case terminates federal jurisdiction except for the limited purpose of reopening the case and vacating the order of dismissal pursuant to Federal Rules of Civil Procedure, Rule 60b ("Rule 60(b)"). McCall, 777 F.2d 1190. Therefore, the Seventh Circuit had that once the case was dismissed, the federal court no longer had jurisdiction over the matter, unless the court had retained jurisdiction or had an independent reason for jurisdiction. McCall, 777 F.2d 1187. To the Seventh Circuit, the settlement agreement was merely a private contractual matter between the parties, and a breach of this agreement or any dispute relating to it would be remediable under a state court action, not federal law, unless diversity jurisdiction existed. McCall, 777 F.2d 1185-1186. The Seventh Circuit again addressed whether a district court had jurisdiction to enforce a settlement agreement after it had dismissed the action in United Steelworkers v. Libby, McNeil & Libby, 895 F.2d 421 (7th Cir. 1990). In Steelworkers, the order of the district court dismissing the action with prejudice was signed by the court and stated that the court had approved the settlement entered into by the parties. The order than dismissed the complaint and counterclaim with prejudice. The Seventh circuit addressed whether this statement by the district court that the settlement agreement was approved constituted a retention of jurisdiction by the court. The court applied its reasoning from McCall; and stated that " 'Rule 41(a)(2) of the Federal Rules of Civil Procedure does not confer authority on federal district judges to enforce the terms of settlement agreements that may have motivated the parties to seek voluntary dismissal of the suit.'" Steelworkers, 895 F. 2d at 423, quoting McCall, 777 F.2d at 1189. Therefore, if the federal court has jurisdiction over the settlement agreement, it must rest on some other grounds of jurisdic-

tion, such as a retention of jurisdiction over the agreement by the district court. Steelworkers, 895 F.2d at 423. On the facts before it, the Court found that the district court did not retain jurisdiction in its order and the order did not incorporate the settlement agreement within it. Thus, the Seventh Circuit found that the district court had no jurisdiction to clarify or enforce the agreement. Steelworkers, 895 F.2d at 424. The Court of Appeals for the Sixth Circuit reached the same conclusions regarding a district court's lack of subject matter jurisdiction to enforce a settlement agreement of an action which the district court had previously unconditionally dismissed in Hinsdale v. Farmers Nat. Bank and Trust Co., 823 F. 2d 993, 995-06 (6th Circuit) 1987). In Hinsdale, the parties signed a stipulation of dismissal with prejudice, even thou the formal settlement documents had not yet been drafted or signed. The district court then dismissed the case with prejudice. Later, certain parties filed motions for specific enforcement of the settlement agreement. Hinsdale, 823 F.2d at 994-995. The Sixth Circuit held that the district court had no jurisdiction to enforce a settlement agreement where the parties had stipulated to a dismissal with prejudice and the court had ordered the unconditional dismissal. Hinsdale, 823 F.2d at 996. In Hinsdale, the Sixth Circuit also clarified its previously ruling in Aro Corp. v. Allied Witan Co., 531 F.2d 1368 (6th Cir.) cert. denied, 429 U.S. 862, 97 S.Ct. 165, 50 L .Ed.d 140 (1976), which had suggested that district courts have inherent jurisdiction to enforce settlement agreements even if the cases are not longer pending before them. The Hinsdale court made it clear that a district court does not have jurisdiction to enforce a settlement agreement without the action being pending before it, such as having been reopened under a Rule 60(b)(6) motion and the prior unconditional order of dismissal with prejudice being vacated. Hinsdale, 823 F.2d at 996. Other Circuit Court of Appeals which have addressed the issue of a district court's jurisdiction to

enforce a settlement agreement have also reached the same conclusion: that after an unconditional dismissal of a federal action, a party's available remedies for breach of the settlement agreement are: 1) file a breach of contract action, usually in state court, or 2) request the district court to vacate the dismissal pursuant to Rule 60(b) and reinstate the case to the court's docket. See e.g., Stipelcovich v. Sand Dollar Marine, Inc., 805 F.2d 599, 605 (5th Cir. 1986) (when federal suit had been dismissed, Plaintiffs remedies to enforce breach of settlement agreement or to move pursuant to Rule 60(b)(6) to vacate the dismissal and reinstate the case); Warner v. Rossignol, 513 F.2d 678, 683 (1st Cir. 1975) (same); Harman v. Pauley, 678 F.2d 479, 481 (4th Cir. 1982) (same).Wilkinson v. FBI, 922 F.2d 555 (9th Circuit 1991). Requesting the district court to summarily enforce the settlement agreement after an unconditional dismissal is not one of the party's available options, because the district court lacks subject matter jurisdiction. See Adduono v. World Hocky Ass'n, 824 F. 2d 617 (8th Circuit 1987) (there is no inherent jurisdiction to enforce a settlement agreement where the district court failed to incorporate the agreement into the dismissal order or otherwise showed an intent to retain jurisdiction); Village of Kaktovik v. Watt, 689 F.2d 222, 232, n.76 (D.C. Cir. 1982) (citing Fairfax and indicating that there is no inherent jurisdiction to enforce a settlement agreement not made part of the dismissal order). See also, Londono v. city of Gainesville, 768 F. 2d 1223 (11th Circuit 1987) ("Absent an independent jurisdictional base, the court had no authority sua sponte to transform Londono's section 1983 claim into a suit seeking the declaration of a contract of settlement and the specific performance thereof.") It should be noted that in the Eleventh Circuit, a split exists among the district courts in that circuit, Kent v. Baker, 815 F. 2d 1395 (11th Cir. 1987) specifically declining to follow Londono. Moreover, the First Circuit, too, appears in discord, with the courts in U.S. v.

Baus, 834 F.2d 1114 (1st Cir. 1987) and Mathewson Corp. v. Allied Marine Industries, Inc., 827 F.2d 850 (1st Cir. 1987) espousing the concept that district courts have inherent power to enforce settlement agreements even when the court already has dismissed the action.

C. Important policies regarding the scope of Federal Court Jurisdiction and the Administration of the Federal Courts Support Review of this issue

Thus, a clear conflict exists between the Ninth Circuit and other Circuit Courts of Appeal on the issue of federal subject matter jurisdiction to enforce settlement agreements post-dismissal of the action. This matter is ripe for this Court to review, because federal courts are courts of limited jurisdiction, which may only hear matters properly before them and within their subject matter jurisdiction. The federal courts are already overburdened, and to allow the Ninth Circuit to adopt this concept of inherent jurisdiction over settlement agreements in all cases that have ever been before a court would, in essence, give district courts jurisdiction in perpetuity over cases. This would allow parties unlimited access to the federal courts, even if a district court no longer has true subject matter jurisdiction over the action, thereby circumventing the United States Constitution, which mandates that federal district courts be courts of limited jurisdiction. Because this issue involves important policies regarding the scope of federal court jurisdiction and access to federal courts, and the conflict in the circuit courts is clear, Kokkonen respectfully suggests this matter is ripe for the court's review.

VI.
DOES A FEDERAL DISTRICT COURT HAVE ANCILLARY JURISDICTION TO ENFORCE SETTLEMENT AGREEMENT WITHOUT OTHER INDEPENDENT GROUNDS FOR FEDERAL COURT JURISDICTION TO ENFORCE SETTLEMENT AGREEMENT

V. THIS COURT LACKS ANCILLARY JURISDICTION TO ENFORCE SETTLEMENT AGREEMENT

It is well-settled that a District Court is not empowered to enforce a settlement agreement without an independent basis of Federal jurisdiction. See Kokkonen v. Guardian Life Insur. Co. of America, 511 U.S. 375, 114 S. Ct. 1673, 1677, 128 L. Ed. 2d 391 (1994); Lucille v. City of Chicago, 31 F. 3d 546 (7th Circuit 1994); McCallbey v. Franzen, 777 F. 2d 1178, 1185-86 (7th Circuit 1985). The breach of an agreement to settle a federal suit "does not, despite its origin, arise under Federal Law." Unelko Corp. v. Prestone Prod. Corp., 116 F. 3d 237, 238 (7th Circuit 1997). Miranda p. 2. Id. The court may retain jurisdiction to enforce the terms of a settlement by explicitly incorporating the agreement into the judgment or expressly reserving authority to enforce the settlement. See Lucille, 31 F.3d at 548. In the case, however, this could did not reserve power to enforce the parties' agreement. See Id. (Declining to equate a judgment's recognition of settlement with reservation of jurisdiction authority). Moreover, Miranda's have not demonstrated that diversity jurisdiction applies nor is such a basis for jurisdiction apparent to this court. This court lacks jurisdiction to enforce the parties' settlement. Miranda, F. Supp. 2d 2000 WL 765085. P. 2., Coar, J., Id. In the alternative, Miranda's seek to set aside this court's order dismissing counts II through VII of their complaint. Plaintiff relied on Federal Rule of Civil Procedure 60 (b) (6), which permits the court to grant relief from judgment where appropriate to achieve justice. See Khipprott v. United States, 335 U.S. 601, 615, 69 S. Ct. 384,

93 L. Ed 266 (1949). Rule 60(b) confers this court with jurisdiction to entertain this motion and vacate a previous judgment. See McCall-Bey, 777 F. 2d at, 1186; Brummerstedt v. American Airlilnes, Inc. No. 91 C 8382, 1994 WL 530807, at 1 (N.D. Ill. 1994). P. 2: See Miener v. Missouri Dept. of Mental Health, 62 F. 3d 1126 (8th Circuit 1995); the circuit Judge held in Miener, 1127 Id. In Kokkonen v. Guardian Life Insurance Co. of American,—U.S. —, —-, 114 S. Ct. 1673, 1676-77, 128 L. Ed. 2d 391 (1994) the Supreme Court held district courts do not have inherent power, that is, automatic ancillary jurisdiction, to enforce an agreement settling Federal Litigation. Lucille v. City of Chicago, 31 F. 3d 546, 548 (7th Circuit 1994), cert. denied,—U.S. – 115 S. Ct. 1109, 130 L. Ed 2d 1074 (1995); Sheng v. Starkey Labs, Inc. 53 F. 3d 192, 195 (8th circuit 1995). Ancillary jurisdiction to enforce a settlement agreement exists only "if the parties' obligation to comply with the terms of the settlement agreement [is] made part of the order of dismissal – either by **** a provision "retaining jurisdiction" over the settlement agreement [ ] or by incorporate[ion of] the terms of the settlement agreement in the order." Kokkonen, —U.S. at – 114 S. Ct. at 1677. Id. 1127 and 1128.0n or about September 14, 2005, Mr. Ward and his agent, Mr. Johnson instructed Defendants counsel to prepare fraudulently documents for settlement agreement. Thereafter, Mr. Johnson sealed the document until Plaintiff appeared in court, Mr. Johnson turnover a copy of the document in court. The document Mr. Johnson gave Plaintiff to sign believed to be a copy of the fraudulently document prepared for "settlement agreement." The document was fraudulent concealed. Plaintiff refused to sign the document and will not sign any documents had been constructive fraud by Mr. Ward and his agent, Mr. Johnson. Plaintiff never authorized his attorney's to accept any settlement offers not prepare any documents for settlement agreement. Matter of American Precision

Vibrator Co., 863 F. 2d 428 (5th Circuit 1989); Circuit Judge: held in this case. We hold that Federal Rule of Civil Procedure 60 (a) authorizes the district court to undo the effect of the clerical mistake. Accordingly, we reverse the decision of the district court. Id. Plaintiff did attend the settlement conference with his counsel Mr. Johnson to discuss settlement, at the conference there was a offer, but Plaintiff rejected the offer August 1, 2005. At no time relevant to this pending case, thereafter the settlement conference Plaintiff did not authorize Mr. Ward nor his agent Mr. Johnson to make any settlement agreement nor accept any offer. Muro v. Abel Freight Lines, Inc. 283 App. 3d 416, 218 Ill. Dec. 691, 669 N.E. 2d 1217 (First District 1996); Appellate court, Justice, held in Muro evidentiary hearing was required before settlement could be approved as fair. Id. See Hinsdale v. Farmers Nat. Bank and Trust Co., 823 F. 2d 993, 995 and 96 (6th Circuit 1987). Circuit Judge held in Hinsdale Plaintiff and Defendant filed separate motions for specific enforcement of the settlement agreement. Defendant McKinnon opposed the motion for enforcement contending that she did not agree to settle the case upon the terms urged by Plaintiff and Defendant "F.N.B." Judge Manos heard argument and received Defendant Affidavit and other materials but did not hold an evidentiary hearing. Hinsdale. Id. The court further held that: pursuant to Rule 41 (a)(1) (ii) of the Federal Rules of Civil Procedure, the parties and their counsel executed a stipulation for dismissal with prejudice, which made reference to, but was not conditioned upon, performance of settlement agreement. Hinsdale. Id. The District Court then unconditionally dismissed the action with prejudice and did not attempt to retain jurisdiction to enforce the settlement agreement. This unconditional dismissal with prejudice terminated the district court's jurisdiction except for the limited purpose of reopening and setting aside judgment of dismissal within the scope allowed by Rule 60 (b)(6). Scelsa v. City University

of New York, 76 F. 3d 37, 39, 40 and 41 (2nd Circuit 1996); Kelly v. Greer, 334 F. 2d 434-436 (3rd Circuit 1964); In re Phar-mor, Inc. Securities Litigation, 172 F. 3d 270 and 274 (3rd Circuit 1999); National Presto Industries, Inc. v. Dazey Corp., 107 F. 3d 1576 and 1579 (Federal Circuit 1997); Bergman v. Spring/United Management Co., 171 F.R.D. 308 (D. Kansas 1997); Marques v. Federal Bank of Chicago, 286 F. 3d 1014 (7th Circuit 2002). Caudill v. North American Media Corp, 200 F.3d 914 (6th Circuit 2000). Dickerson v. Board of Education of Ford Heights, 32 F.3d 1114, 016 (7th Circuit 1994).

Although it had already dismissed the parties suit with prejudice and stricken the case from its docket, the district court cited Federal Rule of Civil procedure 60(b)(6) as authority for enforcing the settlement agreement against McAlpin. Id. Rule 60(b) (6) may, in certain circumstances, be used to provide a party with relief from a judgment of dismissal. However, in this case the district court error in construing Rule 60(b) as a broad exception to the Supreme Court's decision Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 114 S. Ct. 1673, 1677, 128 L. Ed. 2d 391 (1994), in which the court held that a Federal District Court lacks jurisdiction to enforce a settlement agreement terminating litigation unless the court "expressly retained jurisdiction to enforce the settlement agreement" or "incorporated the terms of the settlement into the dismissal order." Id. At 380-81, 114 S. Ct. 1673. When read in conjunction with the dismissal order in this case, Kokkonen precludes the district court from enforcing any provisions of the settlement agreement that were not expressly incorporated into an order entered while the case was still pending on the court's docket. See McAlpin v. Lexington 76 Auto Truck Stop, Inc., 229 F. 3d 491 (6th Circuit 2000).

VII.
DID THE DISTRICT COURT ABUSE ITS DISCRETION WHEN THE COURT TOOK POSITION TO ENFORCE SETTLEMENT AGREEMENT WITHOUT SUBJECT MATTER JURISDICTION AND GRANT DEFENDANTS AND DISMISSED THE CASE WITH PREJUDICE. PETITIONER PETITIONED THE DISTRICT COURT TO VACATE DISMISSAL WITH PREJUDICE ENTERED DECEMBER 20, 2005. THE DISTRICT COURT DENIED THE MOTION TO VACATE.

THE LEGAL BASIS FOR RELIEF FROM JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60 (B)(6)

Federal Rule of Civil Procedure, 60 (b)(3)(6), 28 U.S.C.A., provides for equitable relief from a judgment or order in certain prescribed circumstances. Such equitable relief from a judgment is generally available on the following grounds within one year of the date on which the judgment had been entered. McPherson v. Accousa, Inc., 1997 W.L. 598138 (N.D. Ill. 1997), 95 C5888. Judge Ashman mistake in advertence, surprise, or excusable neglect. Gould D. Bowyer, Ill. F. 3d 82-83-84 (7th Circuit 1993), see Miranda V. Town of Cicero, F. Supp. 2d, 2000 W.L. 765085 (N.D. Ill. 2000), 99C0082. Corex Corp. v. United States, 638 F. 2d 119, 121 (9th Circuit 1981) United States v. Sparks, 685 F. 2d 1128, 1130 (9th Circuit 1982) Klapprott v. United States, 335 U.S. 601, 615, 69 S. Ct. 384, 390-93, L. Ed. 1099, (1949).

In Re Hunter, 66 F. 3d 1002-03 (9th Circuit 1995) the Circuit Judge, held in Hunter court that: action to set aside acknowledgement of satisfaction of judgment qualified as action seeking "relief from final judgment, order or proceeding," within meaning of Federal Rule of Civil Procedure specifying relief may be granted; bankruptcy court could not exercise ancillary jurisdiction over creditor's action; and dismissal should have been dismissed for

lack of subject matter jurisdiction, not on merits and not with prejudice. 1003 Id. The Village of Dolton attorney, Larry S. Kowalczyk was instructive by Plaintiff attorneys, Anderson J. Ward and his agent, attorney Letheal N. Johnson they must prepare the documents for the settlement agreement. Mr. Ward and his agent Mr. Johnson further instructed Mr. Kowalczyk to conceal the documents until we appear in Judge Guzman's Court. The Plaintiff was unable to see any of these documents, until that day in court. The documents related to the settlement agreement and motion to enforce settlement agreement was instructed by fraud with intent to deceive Plaintiff, See Davidov v. Honeywell, Inc., 515 F. Supp. 1358 (D. Minn. 1981). The court held in Davidov, the court need not decide whether State or Federal law determines the applicability of the fraudulent concealment, for that doctrine may be applied under both Minnesota and Federal law. On the record before it, the holds that the Statute of Limitation was to tolled until Plaintiff's discovery of the alleged concealment see American Civil Liberties Union v. City of Chicago, 431 F. Supp. 25, 28 (N.D. Ill. 1976); Jessup v. Luther, 277 F. 3d 926 (7th Circuit 2002); Slotkin v. Citizens Gas Co. of New York, 614 F. 2d 301 (Second Circuit 1979), Dictograph Products Company v. Sonotone Corporation, 230 F. 2d 131 (Second Circuit 1956); Dictograph filed an action 15 years later from maintaining action to invalidate license agreements on ground that they were allegedly obtained by fraud. Id. Ellingsworth v. Chrysler, 665 F. 2d 180 (7th Circuit 1981); Chicago R.Il and P. Ry. Co. v. Callicotte, 267 F. 799 (8th Circuit 1920); Scottish Air Intern v. British Caledonian Group, 152 F.R.D. 18, 19 and 23 (S.D. New York 1981); Bertha Building Corp. v. National Thehtres Corp., 269 F. 2d 785 (Second Circuit 1959); Community Dental Services v. Tani, 282 F. 3d 1164 (9th Circuit 1002); Pickens v. Merriam, 242 F. 363-66 (9th Circuit 1917); Donald v. Cook County Sheriff's Dept., 95 F. 3d 548 (7th Circuit 1996). VenLeeuwan v. Farm Credit Admin., 600 F.

Supp. 1161, 1162-04 (D. Oregon 1984) Hazel-Atlas Glass Co. v. Hartford Empre Co., 322 U.S. 238, 64 S. Ct. 997, 88 L. Ed 1250 (1944) United Mine Workers v. Gibbs, 383 U.S. 715, 86 Ct. 1130, 16 L. Ed. 2d 218 (1966) Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 100 L. Ed. 2d 855, 108 S. Ct. 2194 (1988) Pioneer Inv. Services v. Brunswick Associates., 507 U.S. 380, 123 L. Ed 2d 74, 113 S. Ct. 1489 (1988). Laurenzano v. Crossland Sa[y]. Bank, 837 F. Supp. 514-15 (E.D. New York 1993) Keeling v. Sheetmetal Workers Interm Ass'n, 937 F. 2d 408-09 (9th Circuit 1991) McPherson v. Accousa, Inc., 1997 W.L. 598 138 (N.D. Ill. 2000) 99 C5888 Gould D. Bowyer, Ill. F. 3d 82, 83 04 (7th Circuit 1993) Miranda v. Town of Cicero, F. Supp. 2d 2000 W.L. 765085 (N.D. Ill. 2000) 99 C0082 Davidov v. Honeywell, Inc., 515 F. Supp. 1358 (D. Minn. 1981) American Civil Liberties Union v. The City Chicago, 431 F. Supp. 25-08 (N.D. Ill. 1976) Donald v. Cook County Sheriff's Dept., 95 F. 3d 548 (7th Circuit 1996). Re Ring, 141 Ill. 2d 128, 152 Ill. Dec. 301, 565 N.E. 2d 983 (1990).

VIII.
PLAINTIFF HAS SUFFICIENTLY IDENTIFIED THE LANGUAGE IN HIS PETITION ATTORNEY'S DO NOT HAVE AUTHORITY TO ACCEPT SETTLEMENT OFFER WITHOUT HIS CLIENT EXPRESS CONSENT OR AUTHORIZED TO CONCLUDE A SETTLEMENT

Confirmation of the settlement in writing is important since terms in a settlement negotiated by an attorney are not binding on the Client in the absence of the Client's approval. Hopkins v. Holt, 194 Ill. App. 3d 788, 551 N.E. 2d 400, 141 Ill. Dec. 407 (First District 1990). In Brewer v. National Railroad Passenger Corp., 165 Ill. 2d 100, 649 N.E. 2d 1331, 208 Ill. Dec. 670 (1995). The Supreme Court emphasized the distinction between the authority of an attorney to represent a Client in Litigation and the authority of an attorney tc compromise or settle a lawsuit.

When a settlement is made out of court and is not made a part of the judgment, the

Client will not be bound by the agreement without proof of express authority. This authority will be presumed, and the burden of proof rests on the party alleging authority. If opposing counsel fails to make inquiry or to demand proof of the attorney's authority, opposing counsel deals with the attorney at his or her peril. However, while an attorney's authority to settle must be expressly conferred, the existence of the attorney's authority to settle in open court is presumed unless rebutted by affirmative evidence that authority is lacking. Failure to prosecute appeal from client's criminal conviction and failure to inform client that appeal has been dismissed warrant six-month suspension, even though appeal is allegedly frivolous. In Re Ring, 141 Ill. 2d 128, 152 Ill. Dec. 301, 565 N.E. 2d 983 (1990). Zamouski v. Gerrard, 1 Ill. App. 3d 890, 275 N.E. 2d 429 (Second District 1971) Academy Chicago Publishers v. Cheever, 144 Ill. 2d 24, 161 Ill. Dec. 335, 578 N.E. 2d 981 (1991). There was insufficient evidence that Plaintiffs attorney had authority to enter settlement outside of court and presence of parties. Karalee v. Flowers, 185 Ill. App. 3d 224, 133 Ill. Dec. 382, 541 N.E. 2d 219 (Second District 1989). There was no valid acceptance of buyer's settlement proposal, where seller made no effort to notify buyer of his "acceptance" until long after he rejected the offer by making a counter offer. Sementa v. Tylman, 230 Ill. Apo. 3d 701, 172 Ill. Dec. 327, 595 N.E. 2d 688 (Second District 1992). Borg-Warner Corporation v. Anchor Coupling Co., 16 Ill. 2d 234, 156 N.E. 2d 513 (1959). Under circumstances, it was an abuse of discretion for District Court to effectively change settlement from one providing for dismissal of Plaintiffs complaints with prejudice to one providing for dismissal without Plaintiff. Kohr v. Allegheny Airlines, Inc., 504 F. 2d 400 (7th Circuit 1974). Autera v. Robinson, 419 F. 2d 1197 (D.C. Circuit 1969). Warner v. Rossignol, 513 F. 2d 678, 79 (First

Circuit 1975). Fairfax Countywide Citizens v. Fairfax County, 571 F. 2d 1299 (Fourth Circuit 1978). In re Corrugated Container Antitrust Litigation, 752 F. 2d 137, 38 (Fifth Circuit 1985). Although District Court has inherent power to enforce an agreement to settle a case pending before it summarily, when opposition to enforcement of settlement is based not on merits of claim but on challenge on validity of agreement itself, parties must allow an evidentiary hearing on disputed issues of validity and scope of agreement. Mid-South Towing Co. v. Har-Win, Inc., 733 F. 2d 386 (Fifth Circuit 1984). Massachusetts Casualty Insurance Co. v. Forman, 469 F. 2d 259 (Fifty Circuit 1972). Summary enforcement of an alleged settlement was improper where there was a substantially factual dispute as to terms of the settlement, and under the circumstances, an evidentiary hearing should have been held. Kukla v. National Distillers Products Company, 483 F. 2d 619 (Sixth Circuit 1973). Odomes v. Nucare, Inc., 653 F. 2d 246, 47 (Sixth Circuit 1981). Harrop Western Airlines, Inc., 550 F. 2d 1143-44 (Ninth Circuit 1977)

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests this court to issue a Writ of Certiorari. So that the Court may address this matter on the merits.

Respectfully Submitted,

Ricardo Pittman Jr.
Petitioner Pro-Se

NO.

SUPREME COURT OF THE UNITED STATES
OCTOBER 2007 TERM

Ricardo Pittman, Jr.
Petitioner,

vs.

THE VILLAGE OF DOLTON IS A MUNICIPAL CORPORATION IN THE STATE OF ILLINOIS ET. AL.,
Respondent.
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
NOTICE OF FILING

TO: Solicitor General of the United States Department of Justice 950 Pennsylvania Avenue, NW Room 5614

Washington, DC 20530-0001

The Village of Dolton Clerk Office

14014 Park Avenue Dolton, IL 60419

PLEASE TAKE NOTICE that on the day or September, 2007. I caused to be filed with the Clerk of the United States Court of Appeal for the Seventh Circuit, Chicago, Illinois. Honorable Justices, in the Dirksen Building, 219 South Dearborn, Chicago, Illinois, the enclosed **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES**

COURT OF APPEALS FOR THE SEVENTH CIRCUIT,

a copy of which is attached hereto and served upon you.

CERTIFICATE OF SERVICE

I, Ricardo Pittman, Jr., non-attorney, certify that I have served the foregoing NOTICE to the above names parties by depositing the same in the U.S. Mail at Dearborn and Adams, Chicago, IL 60604, before 5:00 p.m. on the day of September, 2007

_____

RICARDO PITTMAN, JR.

SUBSCRIBED AND SWORN to before me this day of September, 2007.

_____

NOTARY PUBLIC

RICARDO PITTMAN, JR.
14708 South Indiana Avenue, Apt. 1N Dolton, Illinois 60419
773-445-7786

APPENDIX

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

June 28, 2007

Before

Hon. FRANK H. EASTERBROOK, *Chief Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge* **Hon.**

MICHAEL S. KANNE, *Circuit Judge*

IN RE:

RICARDO PITTMAN, JR., Petitioner.

No. 07-8017

Petition for Permission to Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Ronald A. Guzman,
Judge.

Upon consideration of the **PETITION AND MEMORANDUM OF LAW IN SUPPORT OF HIS PETITION FOR PERMISSION TO APPEAL INTERLOCUTORY ORDER PURSUANT TO 28 U.S.C.A. Section 1292(b),** filed on June 13, 2007, by the petitioner,

IT IS ORDERED that the petition is **DENIED.**

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
Submitted August 2, 2006*
Decided
August 11, 2006

Before
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. KENNETH F. RIPPLE, *Circuit Judge*
Hon. DIANE S. SYKES, *Circuit Judge*

06-1028
RICARDO PITTMAN, JR.,

Plaintiff-Appellant,

DOLTON POLICE DEPARTMENT, and OFFICER LACEY,

Defendant s-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 04 C 4890

Ronald A. Guzman, *Judge.*

ORDER

Ricardo Pittman appeals from a judgment of the district court granting the defendants' motion to enforce an oral settlement agreement. We affirm.

After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

Pittman filed a pro se civil rights complaint against the Dolton Police Department and "Ofc. Lacey #500," alleging generally an unlawful search and seizure. The case was referred to a settlement conference before a magistrate judge. No transcript is in the record, but the parties agree that at the conference Pittman rejected the defendants' offer of $10,000 to dismiss the lawsuit. At the request of Pittman's counsel, the defendants agreed to leave the offer open for 48 hours. Within the next two days Pittman's attorneys faxed the defendants a letter indicating that Pittman had accepted their settlement offer. Three weeks later the magistrate judge held another status hearing, only this time Pittman appeared without counsel. Defense counsel informed the magistrate judge that they received Pittman's letter accepting the settlement offer and believed that the case had been settled. The magistrate judge asked Pittman to confirm that the case was settled, but he replied that he preferred to wait for his counsel to answer that.

At a third status hearing held a few weeks later, Pittman appeared with counsel, who informed the magistrate judge that, although the parties had agreed to settle, Pittman had changed his mind. Defense counsel argued that there was an, oral settlement agreement and later moved to enforce it. In response, Pittman filed a pro se motion objecting to enforcement of the settlement agreement on grounds t at is ea attorney t rea ene to withdraw rom the case if Pittman did not agree to the settlement.

The district judge held a hearing to determine whether Pittman authorized his counsel to enter into the settlement agreement with the defendants. Both of Pittman's attorneys testified that he called them the day after the August 1 settlement conference and agreed to accept the defendants' offer. Pittman, who was representing himself at the hearing, did not cross-examine is attorneys or testify to a contrary version of events.

The district judge credited the unimpeached testimony of Pittman's attorneys, finding that Pittman had authorized them to accept the defendants' offer. The judge thus determined that the agreement was enforceable and ordered the defendants to tender the $10,000 owed under the agreement. The judge dismissed_ the case with prejudice but retained jurisdiction to enforce the settlement agreement.

At the outset we address that retention of jurisdiction._We have held that when a district court grants a motion to enforce a settlement agreement and dismissesthe case with prejudice, any purported retention of jurisdiction to enforce the agreement is ineffective. *Lynch, Inc. v. SamataMason Inc.*, 279 F.3d 487, 489_(7th Cir. 2002). No one disputes that, *prior* to the dismissal, the district court had jurisdiction to decide whether a valid settlement agreement existed. It was only when the district court dismissed the case with prejudice that it lost jurisdiction to do anything further; if it truly wanted to retain jurisdiction, the district court should_have dismissed the case_without prejudice. *See id.* As it is, the dismissal with prejudice simply means that uture disputes over performance of the agreement will not automatically be handled by the district court. *See id.* However, the impropriety of the district court's retention of jurisdiction does not affect our jurisdiction to hear this appeal; the case was dismissed with prejudice and Pittman properly takes his appeal from that dismissal.

Pittman's argument on appeal is that ruling on the validity of the settlement agreement violated the parol evidence rule. He contends that the parol evidence rule requires that all agreements be reduced to writing, and that, because his was not, it is unenforceable. We cannot accept the argument. The parole evidence rule precludes the introduction of extrinsic evidence that would change the meaning of a written agreement; ence, the rule actually contemplates the existence of a written agreement. *See W.W. Vincent and* Co. *v. First Colony Life Ins.* Co., 814 N.E.2d 960,

.966 (III. Ct. App. 2004); *Fed. Deposit Ins. Corp. v. W.R. Grace & Co.*, 877 F.2d 614, 620 (7th Cir. 1989).

Pittman's real concern is the lack of *any* agreement, written or oral. When a party disputes the existence of a settlement agreement, the district court should hold an evidentiary hearing. *See Wilson v. Wilson*, 46 F.3d 660, 664 (7th Cir. 1995). The district judge here proceeded correctly and found that an oral settlement agreement had been reached. Oral settlement agreements are valid under Illinois law, subject to the statute of frauds. *See Kim v. Alvey, Inc.*, 749 N.E.2d 368, 378 (Ill. Ct. App. 2001); *Lynch, Inc. v. SamataMason Inc.*, 279 F.3d 487, 490 (7th Cir. 2002) (applying Illinois law). Pittman points to nothing to challenge the district judge's finding that an oral agreement existed, and so we shall not disturb it.

Pittman's only other argument is that his attorneys should not have withdrawn a motion for a default judgment which they had filed when the defendants failed to show up for an earlier hearing. That is an argument about the effectiveness of his counsel, but there is no Sixth Amendment right to effective assistance of counsel in civil cases. *See Stanciel Gramley*, 267 F.3d 575, 581 (7th Cir. 2001); *Pokuta v. Trans World Airlines Inc.*, 191 F.3d 834, 840 (7th Cir. 1999). If the performance of Pittman's attorneys was deficient, the remedy lies in a malpractice action rather than this appeal. *See Stanciel*, 267 F.3d at 581.

AFFIRMED